

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

JENNY WILKS

PLAINTIFF

v.

No. 5:19-cv-05102

ANDREW SAUL, Commissioner,  
Social Security Administration

DEFENDANT

**ORDER**

The Court has received a report and recommendation (Doc. 18) from Chief United States Magistrate Judge Erin L. Wiedemann. Plaintiff has filed objections (Doc. 19). The Magistrate recommends that the Court affirm the Social Security Administration's decision and dismiss Plaintiff's case with prejudice. Plaintiff objects to the Magistrate's finding because the Appeals Council did not consider the treating source statement submitted by Plaintiff. The Court has conducted a de novo review of the report and recommendation pursuant to Plaintiff's objection. 28 U.S.C. § 636(b)(1).

The day before Plaintiff's hearing with the ALJ, Plaintiff attempted to submit a treating source statement. The ALJ found the evidence was untimely because Plaintiff did not submit the treating source statement five business days prior to the hearing nor did Plaintiff inform the ALJ of the potential evidence. The treating source statement was then submitted to the Appeals Council, but the Appeals Council decision did not state the treating source statement was received or reviewed. Plaintiff argues because the treating source statement was new and material evidence the Appeals Council was required to consider the evidence. However, the record demonstrates the treating source statement was not new or material, and even if it had been considered there is no indication the ALJ would have decided differently. The report and recommendation contains no clear error, and is ADOPTED IN ITS ENTIRETY.

IT IS THEREFORE ORDERED that the decision of the Social Security Administration is AFFIRMED and this case is DISMISSED WITH PREJUDICE. Judgment will be entered separately.

IT IS SO ORDERED this 31st day of July, 2020.

/s/ P. K. Holmes, III

P.K. HOLMES, III  
U.S. DISTRICT JUDGE